

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DENNIS K. SMITH

Claimant

VS.

KC FAB INC.

Respondent

Self-Insured

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Docket No. 217,487

ORDER

The claimant appeals an Order entered by Assistant Director Brad E. Avery, dated April 23, 1997, wherein claimant's request for temporary total disability compensation was denied.

ISSUES

Whether the Assistant Director exceeded his jurisdiction in finding claimant failed to prove he was unable to perform any substantial and gainful employment and therefore denied claimant's request for temporary total disability compensation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

K.S.A. 44-551(b)(2)(A), as amended, provides that the Appeals Board shall not review a preliminary hearing order entered by an administrative law judge unless it is alleged that the administrative law judge exceeded his jurisdiction in granting or denying the relief requested.

K.S.A. 44-534a(a)(2), as amended, allows appeals from a preliminary hearing for the specific jurisdictional issues regarding whether the claimant suffered an accidental

injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or timely claim made, or whether certain defenses apply.

The Appeals Board has ruled on numerous occasions that the providing of temporary total disability and the ordering of same falls within the power of the administrative law judge at preliminary hearings. In the instant case, the Assistant Director determined claimant was capable of performing sedentary employment and, therefore, was not entitled to temporary total disability. As this is not an issue listed in K.S.A. 44-534a, as amended, the Appeals Board finds the Assistant Director did not exceed his jurisdiction in making such order and accordingly this Appeals Board does not have jurisdiction to review that decision.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this appeal should be, and is hereby, dismissed and the Order of Assistant Director Brad E. Avery, dated April 23, 1997, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

c: John H. Thompson, Kansas City, MO
William A. Wolff, Kansas City, KS
Steven J. Howard, Administrative Law Judge
Brad E. Avery, Assistant Director
Philip S. Harness, Director